UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----------------------------------------------------------------X 17-cv-0849
ALEXA CHUNG, ANASTASIA KOLGANOVA, ASTRID BAARSMA, LEONA WALTON, BRILEY JONES, CRISTA COBER, DANIELA WITT, TATIANA ESMERALDA SEAY-REYNOLDS, GEORGIA HILMER, GRACE HARTZEL, HEDVIG PALM, JULIA FLEMING, JULIE HOOMANS, KATE BOGUCHARSKAIA, KAROLIN WOLTER DANIELS, LINEISY MONTERO FELIZ, SANDRA SCHMIDT, ZUZANNA BIJOCH,

Plaintiffs,

**COMPLAINT**

-Against-

**JURY DEMAND**

THE REALREAL, INC.

Defendants,
-----------------------------------------------------------------X

All plaintiffs, by their attorneys, EDWARD C. GREENBERG, LLC, for their complaint allege as follows:

**THE PARTIES**

1. Plaintiff ALEXA CHUNG ("CHUNG") is a professional actress who resides and works in the State and County of New York.

2. Plaintiff ANASTASIA KOLGANOVA ("KOLGANOVA") is a professional model who resides and works in the State and County of New York.

3. Plaintiff ASTRID BAARSMA ("BAARSMA") is a professional model who resides and works in the State and County of New York.

4. Plaintiff LEONA WALTON p/k/a Binx Walton ("WALTON") is a professional model who resides in Brooklyn, New York, and works in the State and County of New York.

5. Plaintiff BRILEY JONES ("JONES") is a professional model who resides in the State of Texas, but who works and regularly does business as a professional model in the State and County of New York.

6. Plaintiff CRISTA COBER ("COBER") is a professional model who resides in Canada, with a United States residency, and who works and regularly does business as a professional model in the State and County of New York.

7. Plaintiff DANIELA WITT p/k/a Dani Witt ("WITT") is a professional model who resides in Brooklyn, New York, and works in the State and County of New York.

8. Plaintiff TATIANA ESMERALDA SEAY-REYNOLDS ("REYNOLDS") is a professional model who resides and works in the State and County of New York.

9. Plaintiff GEORGIA HILMER ("HILMER") is a professional model who resides and works in the State and County of New York.

10. Plaintiff GRACE HARTZEL ("HARTZEL") is a professional model who resides and works in the State and County of New York.

11. Plaintiff HEDVIG PALM ("PALM") is a professional model who resides in the Country of Sweden, with a United States residency, and who works and regularly does business as a professional model in the State of New York.

12. Plaintiff JULIA FLEMING ("FLEMING") is a professional model who resides in the State and County of New York.

13. Plaintiff JULIE HOOMANS ("HOOMANS") is a professional model who resides and works in the State and County of New York.

14. Plaintiff KATE BOGUCHARSKAIA ("BOGUCHARSKAIA") is a professional model who resides and works in the State and County of New York.

15. Plaintiff KAROLIN WOLTER DANIELS ("WOLTER") is a professional model who resides in the State of California, but who works and regularly does business as a professional model in the State and County of New York.

16. Plaintiff LINEISY MONTERO FELIZ ("MONTERO") is a professional model who resides and works in the State and County of New York.

17. Plaintiff SANDRA SCHMIDT ("SCHMIDT") is a professional model who resides in the Country of Denmark, has a United States residency, and who works and regularly does business as a professional model in the State and County of New York.

18. Plaintiff ZUZANNA BIJOCH ("BIJOCH") is a professional model who resides and works in the State and County of New York.

19. That defendant THE REALREAL INC. (hereinafter "REAL") is a foreign business corporation, duly organized and existing under the laws of the State of Delaware, and is authorized to and does regularly do business in the State and County of New York.

**JURISDICTION**

20. Jurisdiction is conferred upon this Court by 15 U.S.C. §1121(a).

21. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2), in that a substantial part of the events or omissions giving rise to the claims asserted herein, inclusive of those relevant to claims under the New York Civil Rights Law § 50, 51, occurred in this State and this District.

22. Venue is further proper in this District pursuant to 28 U.S.C. §1391(b)(1) as defendant does business in the county and State of New York.

**FACTS RELEVANT TO ALL CLAIMS**

23. Each of Plaintiffs is represented by the model management company, Next Management, LLC, which is located in the city, state and county of New York.

24. All of Plaintiffs careers are centered in the city and State of New York.

25. Each of the Plaintiffs is well known in and to (at least) the modeling industry, and her image, identity and persona identity have been exposed and are known to the general public.

26. CHUNG is well known in and to the fashion and acting industiries, and her image, identity and persona have been exposed and are known to the general public.

27. CHUNG is an actress, fashion influencer, and television host, who is considered by many to be the top “it girl” in the world.

28. CHUNG’s image and persona have been associated with brands such as AJ Jeans, Longchamp, Obzee, and Ugg.

29. CHUNG is widely recognized as the “face of Longchamp”.

30. CHUNG’s name and image have been included in publications, among others, such as GQ Magazine, Vogue, Glamour, and Evening Standard Magazine.

31. CHUNG’s image and identity have been exposed to the general public as a model and actress, on television and in motion pictures, including on television shows such as “Gossip Girl”, “Late Night with Jimmy Fallon”, “Good Morning America”, “The Victoria’s Secret Fashion Show”, “It’s On with Alexa Chung”, and many others.

32. KOLGANOVA has modeled for and been associated with brands such as Kate Spade, Saks Fifth Avenue, Urban Outfitters, Club Monaco, and Juicy Couture.

33. KOLGANOVA’s name and image have been included in publications, among others, such as Teen Vogue, Allure, Elle, Swarovski Magazine, and Harper’s Bazaar.

34. BOGUCHARSKAIA’s image and identity have been exposed to the general public on television via at least the “PIX 11 Morning News”.

35. BOGUCHARSKAIA’s name and image have been included in publications, among others, such as Marie Claire, Elle, Vogue, and the Sunday Times Style Magazine.

36. BAARSMA has modeled for and been associated with brands such as Urban Outfitters and Old Navy.

37. BAARSMA's name and image have been included in publications, among others, such as Elle Magazine

38. WALTON has modeled for and been associated with brands such as Chanel, Tom Ford, DKNY, Fendi, Dior, Marc Jacobs, and Prada.

39. WALTON's name and image have been included in publications, among others, such as Vogue, Teen Vogue, Elle, Interview, i-D, and Sunday Times Style Magazine.

40. JONES has modeled for and been associated with brands such as Coach, and Anna Sui.

41. JONES' name and image have been included in publications, among others, such as Harper's Bazaar, Vogue, and Interview Magazine

42. COBER has modeled for and been associated with brands such as Yves Saint Laurent, Lora Piana, Givenchy, Tiffany, Polo Ralph Lauren, and Smashbox Cosmetics.

43. COBER's name and image have been included in publications, among others, such as Elle, Marie Claire, Vogue, and Glamour Magazine.

44. WITT has modeled for and been associated with brands such as Hunter, Galleries Lafayette, Ann Taylor, J Crew, Kate Spade, Oscar de la Renta, and Saks Fifth Avenue.

45. WITT's name and image have been included in publications, among others, such as Harper's Bazaar, Elle, and Marie Claire.

46. REYNOLDS has modeled for and been associated with brands such as Max Mara, Marc Jacobs, and Dolce & Gabbana.

47. REYNOLDS' name and image have been included in publications, among others, such as Vogue, Teen Vogue, Intermission, and W Magazine.

48. HILMER has modeled for and been associated with brands such as Calvin Klein, Carolina Herrera, Coach, Chanel, and Donna Karan.

49. HILMER's name and image have been included in publications, among others, such as Vogue, Elle, Bon, Styleby, and W Magazine.

50. HARTZEL has modeled for and been associated with brands such as Tom Ford, Michael Kors, Yves Saint Laurent, Chanel, and Ferragamo.

51. HARTZEL's name and image have been included in publications, among others, such as Vogue, Elle, and i-D Magazine.

52. PALM has modeled for and been associated with brands such as Valentino, Gucci, Ann Taylor, Rebecca Minkoff, and Urban Outfitters.

53. PALM's name and image have been included in publications, among others, such as Harper's Bazaar, Bon, and Sunday Times Style Magazine.

54. FLEMING has modeled for and been associated with brands such as Saks Fifth Avenue, Barneys, BCBG, Monique Lhuillier, and Donna Karan.

55. FLEMING'S name and image have been included in publications, among others, such as Vogue, W, The Daily, and Heroine Magazine.

56. HOOMANS has modeled for and been associated with brands such as GAP, Calvin Klein, Donna Karan, and Lacoste.

57. HOOMANS' name and image have been included in publications, among others, such as Vogue, W, Numero, Love, and The New York Times Style Magazine.

58. BOGUCHARSKAIA has modeled for and been associated with brands such as Physician's Formula, Dolce & Gabbana, G-Star, Oscar de la Renta, H&M, and Bloomingdales.

59. BOGUCHARSKAIA's name and image have been included in publications, among others, such as Elle, Allure, L'Officiel, Vogue, Harper's Bazaar, and Sunday Times Style Magazine.

60. WOLTER has modeled for and been associated with brands such as Public School, Tiffany, Hermés, Acne, GAP, and Banana Republic.

61. WOLTER's name and image have been included in publications, among others, such as Vogue, Harper's Bazaar, Elle, i-D, W, and Interview Magazine.

62. MONTERO has modeled for and been associated with brands such as Chanel, Givenchy, Prada, H&M, Michael Kors, and Sephora.

63. MONTERO's name and image have been included in publications, among others, such as Vogue, i-D, Elle, Harper's Bazaar, and W Magazine.

64. SCHMIDT has modeled for and been associated with brands such as Coach, Benetton, Victoria Beckham, and Proenza Schouler.

65. SCHMIDT's name and image have been included in publications, among others, such as Vogue, L'Officiel, Dazed, and Glass Magazine.

66. BIJOCH has modeled for and been associated with brands such as Armani Exchange, BCBG, Prada, Bloomingdale's, Steve Madden, and Ann Taylor.

67. BIJOCH's image and identity have been exposed to the general public via at least the television series "Fashion News Live".

68. BIJOCH's name and image have been included in publications, among others, such as Vogue, Harper's Bazaar, Elle, Marie Claire, Glamour, Numero, and W Magazine.

69. That the notoriety of each of Plaintiffs' images and personas are centered in New York, where plaintiffs have based their modeling careers.

70. That each of plaintiffs is well-known as a model throughout the United States and in other countries throughout the world.

71. Each of Plaintiffs' careers, through their respective careers, have derived income from professional modeling, the jobs of which are dependent upon each of their respective name, reputation and physical appearance.

72. That each of plaintiffs have earned considerable sums in exchange for the use of their name, image, portrait or likeness in connection with the sale or promotion of products or services which plaintiffs elected to associate themselves with on terms and conditions agreeable to them.

73. That each of Plaintiffs' image, portrait and likeness have been used in connection with the advertising and sale of products in the United States and internationally.

74. That each of plaintiffs' name and image have a proven value and selling power.

75. REAL is an online luxury consignment website that offers a full-service marketplace where garments, bags, jewelry, art and other items are inspected and authenticated as "real" before being sold.

76. REAL offers a white glove service in at least 18 United States cities, including New York, where luxury managers will come to buyers' homes, consult with them, and then pick up their items.

77. REAL describes itself as being in a $1.5 trillion dollar industry.

78. REAL describes itself as offering the largest selection of pre-owned and authenticated luxury items including men's and women's luxury fashion, fine jewelry, watches and fine art.

79. REAL sells pieces from many, if not all, of the designers for whom the models have worked, including designers such as Chanel, Hermés, Tom Ford, Louis Vuitton, Prada, Dior, Valentino, and others.

80. Upon information and belief, REAL has over 4.5 million members, who subscribe to its services.

81. That members of REAL can choose from a “Basic” membership for free, a “First Look” membership for $10 per month, or a “First Look Platinum” membership for $30 per month.

82. That REAL sends to its members email advertisements aimed at getting consumers to go to its website to make purchases and use REAL’s services (hereinafter “Email Blast(s)”).

83. That the Email Blasts market and promote the REAL brand.

84. That the Email Blasts market and promote the sale of products on the REAL website.

85. That the Email Blasts market and promote the use of the REAL’s services to sell products through the REAL marketplace.

**THE UNAUTHORIZED USES OF PLAINTIFF’S IMAGE**

86. That defendant has employed each of plaintiffs’ image and likeness within Email Blasts.

87. That the use of each of plaintiffs’ image and likeness within Email Blasts trades on the plaintiffs’ image and likeness to brand REAL.

88. That the use of each of plaintiffs’ image and likeness within Email Blasts trades on the plaintiffs’ image and likeness to market and promote the sale of products on the REAL website.

89. That the use of each of plaintiffs' image and likeness within Email Blasts trades on the plaintiffs' image and likeness to market and promote the use of REAL's services to sell products through the REAL marketplace.

90. That REAL employed the image and likeness of CHUNG in an Email Blast dated January 7, 2016, with the subject "Up to 70% Off + The January Edit: Fendi, Christian Dior & More" (a copy of such use of CHUNG's image and likeness is annexed hereto as Exhibit "A").

91. REAL employed the image and likeness of CHUNG in an email blast dated February 3, 2016, with the subject "30% Off Most Wanted + Smart Investments: Hermes & More" (a copy of such use of CHUNG's image and likeness is annexed hereto as Exhibit "A").

92. REAL employed the image and likeness of KOLGANOVA in an email blast dated July 26, 2015, with the subject "Statement Jewelry: Cartier, Van Cleef & More" (a copy of such use of KOLGANOVA's image and likeness is annexed hereto as Exhibit "A").

93. REAL employed the image and likeness of BAARSMA in an email blast dated July 14, 2015, with the subject "Men's Trend Report: Dior Homme, Tom Ford, LV & More" (a copy of such use of BAARSMA's image and likeness is annexed hereto as Exhibit "A").

94. REAL employed the image and likeness of COBER in an email blast dated April 11, 2015, with the subject "20% Off + Tiffany & David Yurman: Cable Classics, Diamond Rings & More" (a copy of such use of COBER's image and likeness is annexed hereto as Exhibit "A").

95. REAL employed the image and likeness of COBER in an email blast dated June 22, 2015, with the subject "Most Valuable Pieces: Chanel, Gucci, Hermes & More" (a copy of such use of COBER's image and likeness is annexed hereto as Exhibit "A").

96. REAL employed the image and likeness of HILMER in an email blast dated October 18, 2015 (a copy of such use of HILMER's image and likeness is annexed hereto as Exhibit "A").

97. REAL employed the image and likeness of HARTZEL in an email blast dated April 1, 2016, with the subject "For the Frill Of It: Spring Ruffles by Chloe & More" (a copy of such use of HARTZEL's image and likeness is annexed hereto as Exhibit "A").

98. REAL employed the image and likeness of PALM in an email blast dated March 22, 2016, with the subject "The Most Obsessed Items At 30% Off" (a copy of such use of PALM's image and likeness is annexed hereto as Exhibit "A").

99. REAL employed the image and likeness of PALM in two separate locations within an email blast dated March 20, 2016, with the subject "Runway Report: For the Frill Of It By Celine & More" (a copy of such use of PALM's image and likeness is annexed hereto as Exhibit "A").

100. REAL employed the image and likeness of PALM in an email blast dated February 15, 2016, with the subject "Shop Our 3-Day Weekend Sales: Up To 40% Off" (a copy of such use of PALM's image and likeness is annexed hereto as Exhibit "A").

101. REAL employed the image and likeness of PALM in an email blast dated February 12, 2016, with the subject "Editors' Obsessions: NYFW Edition By Celine & More" (a copy of such use of PALM's image and likeness is annexed hereto as Exhibit "A").

102. REAL employed the image and likeness of PALM in an email blast dated July 26, 2015, with the subject "New In Shoes: Christian Louboutin, Proenza Schouler & More" (a copy of such use of PALM's image and likeness is annexed hereto as Exhibit "A").

103. REAL employed the image and likeness of FLEMING in an email blast dated April 1, 2016, with the subject "For The Frill Of It: Spring Ruffles By Chloe & More" (a copy of such use of FLEMING's image and likeness is annexed hereto as Exhibit "A").

104. REAL employed the image and likeness of HOOMANS in an email blast dated January 10, 2016, with the subject "Last Chance Up To 70% Off! The 2016 Style Resolutions Sale

Ends Tonight" (a copy of such use of HOOMANS' image and likeness is annexed hereto as Exhibit "A").

105. REAL employed the image and likeness of HOOMANS in an email blast dated January 13, 2016, with the subject "RealReal Finds: Editors' 2016 Essentials By Celine, Manolo Blahnik & More" (a copy of such use of HOOMANS' image and likeness is annexed hereto as Exhibit "A").

106. REAL employed the image and likeness of HOOMANS in an email blast dated March 11, 2016, with the subject "Men's Tropical Getaway" (a copy of such use of HOOMANS' image and likeness is annexed hereto as Exhibit "A").

107. REAL employed the image and likeness of HOOMANS in an email blast dated March 22, 2016, with the subject "New In: Handbags By Valentino, Louis Vuitton & More" (a copy of such use of HOOMANS' image and likeness is annexed hereto as Exhibit "A").

108. REAL employed the image and likeness of BOGUCHARSKAIA in an email blast dated February 18, 2016, with the subject "NYFW Finale: The Best Of The Runway By Altazarra, Jason Wu & More" (a copy of such use of BOGUCHARSKAIA's image and likeness is annexed hereto as Exhibit "A").

109. REAL employed the image and likeness of MONTERO in an email blast dated February 19, 2016, with the subject "Looks We Love: London Fashion Week Edition By Balmain & More" (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

110. REAL employed the image and likeness of MONTERO in an email blast dated March 14, 2016, with the subject "What To Buy: Spring's Top 5 Essentials By Marni & More" (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

111. REAL employed the image and likeness of MONTERO in an email blast dated February 19, 2016, with the subject "Looks We Love: London Fashion Week Edition By Balmain & More" (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

112. REAL employed the image and likeness of MONTERO in an email blast dated March 13, 2016, with the subject "Spring Time: Men's & Women's Watches By Rolex & More" (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

113. REAL employed the name, image, and likeness of MONTERO in an email blast dated March 9, 2016, with the subject "Is Lineisy Montero On Your Radar" (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

114. That the March 9, 2016 use of MONTERO's name, image, and likeness trades on MONTERO's name, image and likeness in order to brand REAL.

115. That the March 9, 2016 use of MONTERO's name, image, and likeness is used to solicit consumers to purchase products form REAL.

116. That the March 9, 2016 use of MONTERO's name, image, and likeness is used to solicit consumers to utilize REAL's services by selling products through the REAL marketplace.

117. That REAL knew that MONTERO was the model depicted in the March 9, 2016 Email Blast.

118. That despite such notice, REAL did not seek to contact MONTERO with regard to its uses of her name, image, or likeness.

119. REAL employed the image and likeness of MONTERO in an email blast dated March 1, 2016, with the subject "Midnight In Paris: PFW After Party Looks By Chanel & More" (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

120. REAL employed the image and likeness of MONTERO in an email blast dated February 28, 2016, with the subject "Italian Opulence: The Dolce & Gabbana Look" (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

121. REAL employed the image and likeness of MONTERO in an email blast dated December 20, 2016, with the subject "3 Perfect Last-Minute Gifts (That Aren't Scarves)" (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

122. REAL employed the image and likeness of MONTERO in an email blast dated November 17, 2016 (a copy of such use of MONTERO's image and likeness is annexed hereto as Exhibit "A").

123. REAL employed the image and likeness of REYNOLDS in an email blast dated April 3, 2016, with the subject "RealStyle Roundup: Is It Possible To Pull Off The Gucci Beret" (a copy of such use of REYNOLDS' image and likeness is annexed hereto as Exhibit "A").

124. REAL employed the image and likeness of BIJOCH in an email blast dated August 29, 2015, with the subject "Most Coveted: Louis Vuitton, Celine, Saint Laurent & More" (a copy of such use of BIJOCH's image and likeness is annexed hereto as Exhibit "A").

125. REAL employed the image and likeness of SCHMIDT in an email blast dated March 22, 2016, with the subject "New In: Handbags By Valentino, Louis Vuitton & More" (a copy of such use of SCHMIDT's image and likeness is annexed hereto as Exhibit "A").

126. REAL employed the image and likeness of WOLTER in an email blast dated September 24, 2015, with the subject "His & Hers: 20% Off Louis Vuitton Bags" (a copy of such use of WOLTER's image and likeness is annexed hereto as Exhibit "A").

127. REAL employed the image and likeness of WITT in an email blast dated April 30, 2016 (a copy of such use of WITT's image and likeness is annexed hereto as Exhibit "A").

128. REAL employed the image and likeness of JONES in an email blast dated January 8, 2016, with the subject "Ends Today! Shop & Get Up To $250 In Site Credit" (a copy of such use of JONES' image and likeness is annexed hereto as Exhibit "A").

129. REAL employed the image and likeness of WALTON in an email blast dated September 8, 2015, with the subject "Men's New Arrivals: Prada, Valentino & More + Looks We Love" (a copy of such use of WALTON's image and likeness is annexed hereto as Exhibit "A").

130. REAL employed the image and likeness of WALTON in an email blast dated September 14, 2015, with the subject "30% Off Statement Heels: Paul Andrew, Celine & More" (a copy of such use of WALTON's image and likeness is annexed hereto as Exhibit "A").

131. REAL employed the image and likeness of WALTON in an email blast dated September 1, 2015, with the subject "The Wrist List: Chanel, Chopard, Cartier & More" (a copy of such use of WALTON's image and likeness is annexed hereto as Exhibit "A").

132. REAL employed the image and likeness of WALTON in an email blast dated April 30, 2016, with the subject "Men's New Arrivals: Prada, Valentino & More + Looks We Love" (a copy of such use of WALTON's image and likeness is annexed hereto as Exhibit "A").

133. In addition to the dates and emails set forth above, REAL employed other of PLAINTIFFS' images in Email Blasts (copies of some of such uses are annexed hereto as Exhibit "A")

134. Upon information and belief, REAL further employed PLAINTIFFS' name, image and/or likeness on the REAL website, therealreal.com.

135. Each of the uses of PLAINTIFFS' respective images and likenesses by REAL as complained of herein were for trade, advertising and commercial purposes.

136. REAL's use of MONTERO's name as complained of herein was for trade, advertising and commercial purposes.

137. That none the PLAINTIFFS, nor their agent, authorized REAL to use any of their respective names, images, or likenesses in their Email Blasts.

138. That none the PLAINTIFFS, nor their agent, authorized REAL to use any of their respective names, images, or likenesses for trade, advertising, or commercial purposes of any kind.

139. PLAINTIFFS never consented to endorse, promote, advertise or otherwise be associated with the brand REAL.

140. PLAINTIFFS never consented to endorse, promote, advertise or otherwise be associated with REAL's sale of products.

141. That REAL lacks a released signed by any of the PLAINTIFFS, or anyone with legal authority on their behalf, for the use of any of PLAINTIFFS' names, images, or likenesses to be used by REAL in any of their Email Blasts.

142. That REAL lacks a released signed by any of the PLAINTIFFS, or anyone with legal authority on their behalf, for the use of any of PLAINTIFFS' names, images, or likenesses to be used by REAL for trade, advertising, or commercial purposes of any kind.

143. REAL did not obtain the requisite written consent of the PLAINTIFFS, or anyone with legal authority on their behalf, prior to REAL's uses of their images as complained of herein.

144. That each of the complained of uses of PLAINTIFFS' respective names, images, and likenesses by REAL were calculated and intended to, and in fact did, bestow upon REAL an economic advantage by *inter alia*, promoting and generating sales of products.

145. That REAL further benefited by implying to its consumers and members that it had secured the rights use the name, image, and/or likeness of PLAINTIFFS.

146. That REAL further benefited by implying to its consumers and members that it had secured the rights to associate itself with PLAINTIFFS.

147. That the unauthorized use of each of PLAINTIFFS' name, image, and/or likeness by REAL occurred in the State of New York, other states in the United States and elsewhere where its consumers are located.

**ADDITIONAL FACTS RELEVENT TO ALL CLAIMS**

148. That Plaintiffs, by their agent's general counsel, Mr. Alan Kannof, Esq., issued and delivered a notice letter to REAL, dated April 10, 2016 (hereinafter the "April 10, 2016 Letter", a copy of which is annexed hereto as Exhibit "B").

149. The April 10, 2016 Letter notified REAL of the unauthorized uses of PLAINTIFFS' images, and demanded that REAL cease and desist all such uses, and refrain from any and all future uses of PLAINTIFFS' images.

150. Subsequent to the April 10, 2016 Letter, REAL used some of PLAINTIFFS' images and likenesses in Email Blasts.

151. That such post notice uses of PLAINTIFFS' images and likenesses constitute knowing uses of same.

152. Subsequent to notice to REAL, REAL cropped, altered, and otherwise modified the images it had put into the stream of commerce in an effort to avoid and circumvent the New York Civil Rights Law sections 50, 51 and The Lanham Act.

153. PLAINTIFFS' via their agent's general counsel again requested that REAL cease and desist all uses of the PLAINTIFFS' images and likenesses.

154. Notwithstanding REAL's requests, PLAINTIFFS' images and likenesses were not removed from the unauthorized publications.

155. PLAINTIFFS' images and likenesses remained in the stream of commerce.

156. That such unauthorized cropping and mutilation of the PLAINTIFFS' images and likenesses demonstrates knowing use and consciousness of liability under State & Federal Statutes.

157. Each of PLAINTIFFS' livelihood is based upon their respective image, persona, face and physical attributes and how such images may serve to promote or advertise the sale of products or services.

158. REAL altered, mutilated and radically changed such public images of PLAINTIFFS in a cynical effort to avoid liability under state and federal law, and with full knowledge that it had not sought or obtained permission from any of the PLAINTIFFS, or their authorized agent, to mutilate such images.

159. At no time did REAL seek the permission or consent from any of the PLAINTIFFS, nor their authorized agent, to alter any of the PLAINTIFFS' images and likenesses.

160. At all times relevant herein, defendant was aware, and fully knowledgeable, that its use of PLAINTIFFS' images and likenesses were in violation of state and/or federal law.

161. Subsequent to notice to REAL, defendant was aware, and fully knowledgeable, that its use of PLAINTIFFS' images and likenesses were in violation of state and/or federal law.

162. Subsequent to April 10, 2016, REAL, via its Vice President of Legal Affairs, Ms. Dana DuFrane, Esq., engaged in correspondence with Kannof.

163. However, the parties were unable to resolve the matters at issue herein, and REAL referred the matters to their outside counsel, Sidley Austin LLP.

164. Plaintiffs, by the undersigned counsel, issued and delivered a notice letter, dated November 11, 2016, to REAL, via its counsel Sidley Austin, LLP (hereinafter the "November 11, 2016 Letter", a copy of which is annexed hereto as Exhibit "C").

165. The November 11, 2016 Letter advised defendant, *inter alia*, to remove and cease and desist use of each of PLAINTIFFS' images, that its uses of the PLAINTIFFS' images are in violation of New York Civil Rights Law 50, 51 as well as Section 43(a) of the Lanham Act, 15

U.S.C. 1125, and that it has no right to use PLAINTIFFS' images or likenesses in any way, shape or form.

166. That the November 11, 2016 Letter demanded, *inter alia*, a disclosure of the full nature and extent of defendant's uses of PLAINTIFFS' names, images, and likenesses, so that PLAINTIFFS could in good faith formulate a reasonable fee to compensate them for the unauthorized uses.

167. That defendant has failed to provide a meaningful response to the November 11, 2016 Letter.

168. On January 4, 2017, the parties, through their respective counsel, entered into an agreement to toll the applicable statute of limitations for 30 days so that the parties could engage in settlement discussions (hereinafter the "Tolling Agreement", a copy of which is annexed hereto as Exhibit "D").

169. On January 12, 2017, REAL, via its counsel, represented that it planned to present a settlement offer during the following week.

170. Notwithstanding, no settlement offer has been made by REAL.

171. Upon information and belief, REAL possesses information sufficient to provide full responses to the requests set forth in the November 11, 2016 letter.

172. That despite the Tolling Agreement, defendant has failed to provide the information and disclosures sought in the November 11, 2016 Letter.

173. That defendant has failed to participate in meaningful settlement discussions, despite PLAINTIFFS' counsel's requests for same.

174. Upon information and belief, REAL possesses sufficient knowledge and financial and legal resources and hold themselves out to be familiar with applicable law regarding the use of

a person's name, image, photograph, or likeness for trade or advertising purposes within the State of New York and elsewhere.

175. Upon information and belief, REAL possesses sufficient knowledge and financial and legal resources and hold themselves out to be familiar with applicable law under the Lanham Act regarding the use of a person's name, image, photograph, or likeness.

176. REAL knew or should have known and been familiar with the applicable laws and statutes at issue herein.

177. Upon information and belief, REAL has failed to cease and desist all uses of PLAINTIFFS' images.

178. Defendant has failed to provide any compensation to any of PLAINTIFFS for REAL's uses of their name, image, and/or likeness.

179. That the use of PLAINTIFF MONTERO's name and image is/may be a violation of the Federal Trade Commission Act, section 5, 15 U.S.C. 45. in that defendant has unfairly used plaintiff's name and image in its commercial activities of advertising its products.

180. Upon information and belief defendant is a sophisticated licensor and licensee of intellectual property and knows that it must obtain the rights to intellectual property created by third parties *and* the models depicted in said works prior to its commercial use of same.

181. Upon information and belief, defendant failed to adhere to the procedures and protocols necessary for it to obtain the rights to use any of PLAINTIFFS' names, images, or likenesses, prior to its use of same.

182. That defendant has commercially benefited from its uses of the PLAINTIFFS' names, images, and/or likenesses.

183. That no permission, consent or authorization for use of any of PLAINTIFFS' names, images, or likenesses was ever sought by REAL, to PLAINTIFFS or their agent, prior to REAL's uses of same.

184. That the full nature and extent of all unauthorized uses of PLAINTIFFS' names, images, and/or likenesses are unknown to PLAINTIFFS as of this writing, said information being within the sole knowledge, custody, and control of Defendant.

185. That such details and information are expected to be ascertained through discovery in this action.

186. Pursuant to Federal Rule 11, PLAINTIFFS has sought to obviate judicial intervention and filing of suit.

187. The REAL has no defense at law to the claims set forth herein, nor is it, upon information and belief, in possession of any exculpatory documents although same have been duly demanded from them.

188. Paragraphs "1" through "187" are incorporated by reference with respect to each of the below claims for relief.

## JURY DEMAND

189. The plaintiffs request a trial by jury on all issues.

## AS AND FOR A FIRST CLAIM FOR RELIEF VIOLATIONS OF NEW YORK CIVIL RIGHTS LAW §50 and §51 AS ALLEGED BY PLAINTIFFS CHUNG, WALTON, JONES, REYNOLDS, HARTZEL, PALM, FLEMING, HOOMANS, BOGUCHARSKAIA, MONTERO, and SCHMIDT AGAINST DEFENDANT

190. That each PLAINTIFF has a separate claim for relief against defendant under The New York Civil Rights Law, Sections 50, 51.

191. That the New York Civil Rights Law § 50 and 51 specifically proscribe the use of an individual's name, portrait or picture for trade or advertising purposes, without the prior written consent of said individual.

192. The New York Civil Rights Law § 51 provides *inter alia*, that compensatory and exemplary damages are recoverable thereunder.

193. Section 50 of the New York Civil Rights Law evidences a strong public policy against such unauthorized use, defining any such offense as a *misdemeanor*.

194. Section 51 of the New York Civil Rights Law enumerates civil remedies available thereunder including but not limited to money damages in the form of compensatory and/or exemplary damages and injunctive relief.

195. Defendant's uses of each of the PLAINTIFFS' names, images, and/or likenesses, are in direct violation of the New York Civil Rights Law § 50, 51 as there existed/exists no executed written consent to the specific uses complained of herein.

196. Defendant's uses of PLAINTIFFS' names, images, and/or likenesses, are in direct violation of the New York Civil Rights Law § 50, 51 as they failed to possess an executed written consent prior to any use by them of the Subject Images or plaintiff's name.

197. That REAL had actual knowledge that it had no authorization, consent or license from the PLAINTIFFS to use their respective names, images and/or likenesses for trade or advertising purposes.

198. Notwithstanding such knowledge, REAL employed PLAINTIFFS' respective names, images, and/or likenesses, knowingly, in violation of law.

199. As a result of the foregoing and pursuant to said statutes, PLAINTIFFS have been damaged and are entitled to relief as per statute in the forms of compensatory damages, in a sum to be determined by this Court, plus punitive or exemplary damages in a sum ultimately to be

determined by this Court, and costs and disbursements incurred by plaintiff in the prosecution of this action, together with an Order from this Court permanently restraining the defendant herein from utilizing the name, image or likeness of the PLAINTIFFS for any trade or advertising purposes.

**AS AND FOR A SECOND CLAIM FOR RELIEF**
**VIOLATION OF §43(a) OF THE LANHAM ACT**
**AS ALLEGED BY ALL PLAINTIFFS AGAINST DEFENDANT**

200. That each PLAINTIFF has a separate claim for relief against defendant under The Lanham Act..

201. That as set forth herein, each of PLAINTIFFS' names, images, likenesses and/or persona have been used extensively and employed in international advertising campaigns for well-known products and marks, and are recognizable to the general public in *at least* the United States, and specifically regions and/or audiences in which and to whom REAL targets via its Email Blasts.

202. REAL's uses of PLAINTIFFS' names, images, likenesses and/or persona were aimed at its members and potential consumers in connection with REAL's products and services.

203. Each of PLAINTIFFS' names, images, likenesses and personas have been employed in massive ad campaigns seen in the same geographic areas as REAL's advertising and uses of PLAINTIFFS' names, images, likenesses and persona as complained of herein.

204. That the persons viewing the Email Blasts and seeing PLAINTIFFS' names, images, likeneses, and/or personas, are persons who are well aware of PLAINTIFFS' names, images, likenesses, and/or personas, and to whom PLAINTIFFS' name and images are recognizable.

205. That defendant intentionally traded on PLAINTIFFS' fame and notoriety.

206. That as a result of defendant's unauthorized uses of PLAINTIFFS' names, images, likenesses, and/or personas, PLAINTIFFS are made to appear as if they endorse REAL and its products.

207. THAT many, if not all, of PLAINTIFFS have entered into and do enter into agreements from time to time with competitors of some of the brands for products sold on the REAL website and with which REAL has associated PLAINTIFFS' names, images, likenesses, and/or personas.

208. That such unauthorized, false, and misleading association is harmful to PLAINTIFFS.

209. That such apparent, but false, endorsement is harmful to PLAINTIFFS.

210. That none of PLAINTIFFS have endorsed REAL, and any representations of same are utterly false and misleading.

211. That defendant has used, in connection with PLAINTIFFS' names, images, likenesses, and/or persona, the REAL name and logo, each of which falsely and/or misleadingly represents that PLAINTIFFS and REAL have a brand partnership and/or business relationship.

212. That the hereinabove stated uses of PLAINTIFFS' names, images, likenesses, and/or persona have expressly, implicitly, and/or negligently created a false impression of endorsement by PLAINTIFFS for defendant's consumer goods and services.

213. That defendant has caused PLAINTIFFS to be falsely associated with the sale of its consignment products.

214. That the general public is likely to be, and has been, deceived and/or confused into thinking that products that are the subject herein were sponsored by, or associated with one or more of PLAINTIFFS, or that PLAINTIFFS have provided their respective sponsorship or approval to such goods and/or the services of REAL.

215. That the general public is likely to be, and has been, deceived and/or confused into thinking that each of PLAINTIFFS and REAL have a business arrangement and/or branding agreement with each other.

216. Each of PLAINTIFFS have been injured as a result of defendant's unauthorized use of her name and the Subject Images.

217. That, the use of PLAINTIFFS' names, images, likenesses, and/or persona, in connection with commercial advertising or promotion, misrepresents the nature, characteristics, qualities or geographic origin of REAL's goods and services.

218. That disinterested third parties may have relied on such misrepresentation in seeking to purchase or sell a product through the REAL marketplace.

219. That the foregoing false endorsements constitute violations of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

220. As a result of the foregoing and pursuant to said statutes, PLAINTIFFS have been damaged and are entitled to relief as per statute under 15 U.S.C. §1117 and in the forms of compensatory damages, in a sum to be determined by this Court, inclusive of defendant's profits, any damages sustained by the PLAINTIFFS, costs and disbursements incurred by PLAINTIFFS in the prosecution of this action, the reasonable attorneys' fees incurred by PLAINTIFFS in the prosecution of this action, together with an Order from this Court pursuant to 15 U.S.C. §1116 permanently restraining the defendant herein from utilizing the name, image, likenesses or persona of each of the respective PLAINTIFFS for commercial purposes.

**WHEREFORE**, PLAINTIFFS demands judgment against the defendant as follows:

**ON THE FIRST CLAIM FOR RELIEF** – an award of an amount ultimately to be determined by the court, inclusive of an award of compensatory damages, and exemplary damages with interest thereon, costs and disbursements, and a permanent injunction;

**ON THE SECOND CLAIM FOR RELIEF**– an award of an amount ultimately to be determined by the court, inclusive of an award of compensatory damages pursuant to 15 U.S.C. §1117(a) in the form of defendant's profits, the damages sustained by the plaintiffs, the costs and disbursements, as well as the reasonable attorney's fees pursuant, and a permanent injunction pursuant to 15 U.S.C. §1116;

And an Order of injunction permanently enjoining and prohibiting defendant, including but not limited to wholly owned subsidiaries, from employing or utilizing in any manner or media whatsoever, including all future uses, sales, transfers, assignments, or licensing of any and all of products, advertisements, or any other publication, bearing the name, portrait, photograph, image likeness, or persona of each of PLAINTIFFS, pursuant to The New York Civil Rights Law § 51, and/or The Lanham Act, 15 U.S.C. 1116;

An award of attorneys' fees, costs and expenses associated with the prosecution of this matter;

And such other and further relief as this Court may deem just and proper.

Dated: New York, New York
February 3, 2017

EDWARD C. GREENBERG, LLC

s/Tamara L. Fitzgerald (TL 3784)
By: Edward C. Greenberg, Esq. (EG 5553)
By: Tamara L. Fitzgerald, Esq. (TL 3784)
570 Lexington Avenue, 19th Floor
New York, New York 10022
Tel: (212) 697-8777
Fax: (212) 697-2528
*Attorneys for Plaintiffs*